

641—11.74(709B) Testing, reporting, and counseling—penalties.

11.74(1) The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under Iowa Code chapter 709B shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22, who shall disclose the results to the petitioner.

11.74(2) All testing under this chapter shall be accompanied by pretest and posttest counseling as required under Iowa Code section 141.22. The department of public health may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141.22.

11.74(3) Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.70(709B) to 641—11.74(709B).

11.74(4) Results of a test performed under 641—11.70(709B) to 641—11.74(709B), except as provided in subrule 11.74(6), shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22, the physician of the victim if requested by the victim, the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for the HIV testing under 641—11.70(709B) to 641—11.74(709B), who may use the results to file charges of criminal transmission of HIV. Results of a test performed under these rules shall not be disclosed to any other person without the written, informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.70(709B) to 641—11.74(709B) is subject to the confidentiality provision of Iowa Code section 141.23, and shall not disclose the results to another person except as authorized by Iowa Code section 141.23, subsection 1.

11.74(5) If HIV testing is ordered under 641—11.70(709B) to 641—11.74(709B), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the test conducted pursuant to subrule 11.74(6) shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to Iowa Code section 141.22, who shall disclose the results to the petitioner, the physician of the victim if requested by the victim and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV.

11.74(6) The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

11.74(7) The fact that an HIV test was performed under 641—11.70(709B) to 641—11.74(709B) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

11.74(8) The fact that an HIV test was performed under 641—11.70(709B) to 641—11.74(709B) and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

11.74(9) If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV test other than a test which is authorized as a result of the procedures established in 641—11.70(709B) to 641—11.74(709B), legal protections which attach to such testing shall be the same as those which attach to an initial test under 641—11.70(709B) to 641—11.74(709B), and the rights to a predislosure hearing and to appeal provided under 1998 Iowa Acts, House File 2527, section 35, shall apply.

11.74(10) HIV testing required under 641—11.70(709B) to 641—11.74(709B) shall be conducted by the state hygienic laboratory.

11.74(11) Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under 1998 Iowa Acts, House File 2527, section 35, requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.70(709B) to 641—11.74(709B).

11.74(12) Test results shall not be disclosed to a convicted offender who elects against disclosure.

11.74(13) In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided. Referral information is available at state alternate test sites. Alternate test site information is available from the Iowa department of public health, STD/HIV prevention program, telephone (515)281-4936.

11.74(14) In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

11.74(15) A person to whom disclosure of a convicted offender's HIV test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subrule is subject to a civil penalty of \$1000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the test subject, and all documentation shall be maintained in a confidential manner.